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ORDINANCE APPROVING SUBSTANTIALLY THE FORM OF A 66-YEAR NON-EXCLUSIVE EASEMENT TO THE CITY OF CHULA VISTA FOR STREET AND UTILITY PURPOSES LOCATED IN THE CITY OF CHULA VISTA, WITH CONDITIONS

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DATE: January 9, 2020

SUBJECT:

CHULA VISTA BAYFRONT PUBLIC STREET & UTILITY EASEMENTS

ORDINANCE APPROVING SUBSTANTIALLY THE FORM OF A 66-YEAR NON-EXCLUSIVE EASEMENT TO THE CITY OF CHULA VISTA FOR STREET AND UTILITY PURPOSES LOCATED IN THE CITY OF CHULA VISTA, WITH CONDITIONS

EXECUTIVE SUMMARY:

The Chula Vista Bayfront Master Plan (CVBMP) is the result of a decade-long joint planning effort by the San Diego Unified Port District (District), the City of Chula Vista (City), and a broad coalition of stakeholders. In 2010, the Board of Port Commissioners (Board) certified a Final Environmental Impact Report (Original FEIR) for the CVBMP (UPD #83356-EIR-658; SCH #2005081077; District Clerk Document No. 56562), certified by the District on May 18, 2010 (Resolution No. 2010-78), adopted the Addendum to the Original FEIR on August 13, 2013 (Resolution No. 2013-138), and adopted the Second Addendum to the Original FEIR on April 10, 2018 (Resolution No. 2018-0069) (collectively, the FEIR). The FEIR identifies the right of way that is the subject of this agenda sheet within the street system located in the Sweetwater and Harbor Districts of the CVBMP.

The subject of this agenda sheet is a Grant of Easement to the City that would be used for street and utility purposes (Easement). The exact location of the Easement area has not been determined, but is contemplated to be within the area circled on the "Location Map" attached hereto as Attachment A. The form of Easement is attached as Attachment B (Form Easement). The public right of way and utility facilities that will be constructed, maintained, and repaired as part of the Easement are crucial

to the development of the resort hotel and convention center to be constructed by RIDA Chula Vista, LLC (RIDA) on parcel H-3 of the CVBMP (RHCC) and the new Costa Vista RV Park to be constructed on parcel S-1 of the CVBMP. In addition, the Easement would serve future developments on the remaining approximately 500 acres of land within the CVBMP. Therefore, the Easement is necessary to facilitate all of these developments and future developments within the CVBMP.

Due to the City's unique advantage of having established negotiated business agreements in the form of Franchise Agreements (defined below) and Non-Franchise Agreements (defined below) with the utility companies, and the City's strong partnership with the District in the catalyst RHCC project, staff recommends that the Board grant the Easement to the City. As part of the District's partnership with the City, it was envisioned that the City would be responsible for the cost and expense to operate and maintain the streets within the CVBMP. This Easement would facilitate the ability of the City to execute this role, in addition to providing a mechanism for the various utility companies to serve the various developments within the CVBMP in the most efficient and timely manner possible. Moreover, the ability of the City to franchise utilities within the CVBMP is not novel, and already exists within Marina Parkway, that must be relocated as part of the development of the CVBMP. As part of the City's agreements with the various utility companies, the City would also be in a position to exercise its contractual and municipal powers, where available and feasible, to relocate the utility companies, as necessary as part of future development of the CVB. While the City is not obligated to exercise this power as part of the Easement, it is not certain that the District could have obtained the same powers during negotiations with the utility companies that the City currently possesses as a result of the existing Franchise Agreements (defined below) and Non-Franchise Agreements (defined below). The District and the City have worked collaboratively on the implementation of the CVBMP and if future relocations are required, the District could request them through the City to further development of the CVBMP.

District and City staff have negotiated the Form of Easement attached as Attachment B, but do not yet have agreement on the scope of the Easement area. Staff recommends that the Board approve substantially the Form Easement attached hereto as Attachment B and authorize the Executive Director or her designated representative to execute the Form Easement attached hereto as Attachment B in substantially the same form attached as Attachment B provided that (i) the Form Easement executed by the Executive Director or her designated representative has all blanks filled in and all exhibits attached in accordance with the guidance set forth in the Form Easement attached hereto as Attachment B; and (ii) to the extent there are any new or modified terms in the Form Easement executed by the Executive Director or her designated representative, such new or modified terms do not have the effect of increasing the term of the Form Lease or reducing any indemnity in favor of the District.

RECOMMENDATION:

Adopt Ordinance Approving Substantially the Form Easement to the City for street and utility purposes located in the City, with conditions.

FISCAL IMPACT:

There is no fiscal impact to the District from this agenda item. The City will be responsible for maintenance of the roadways and will be able to use their existing, pre-negotiated Franchise Agreements (defined below) and Non-Franchise Agreements (defined below) to allow for the installation and future relocation of utilities to serve the CVBMP area. The City will also receive any

associated franchise or other revenues under these agreements pursuant to their terms.

The proposed Board action would grant the Executive Director or her designated representative the right to execute the Form Easement attached hereto as Attachment B under certain conditions. The Form Easement to the City for street and utility purposes does not require that the City pay the District for the Easement. Under the Form Easement, the City would have the right to allow utility companies to construct, install, utilize, maintain, repair, restore, remove, replace, alter, expand, and reconstruct subsurface utility improvements within the Easement area through revenue generating franchises (Franchise Agreements) or other similar types of revenue generating agreements (Non-Franchise Agreements). The District would not share in the revenues generated from the franchises or other types of agreements with the utility companies, but the City would be responsible for the cost and expense to operate, maintain, and repair the Easement area, right of way, and City's utility facilities. The City has agreed to indemnify, defend (with counsel reasonably approved by the District) and hold harmless the District and its officers, directors, agents, and employees from and against any and all claims, liabilities, losses, costs, damages, and expenses, including without limitation, injury or death of persons or damage to or loss of property, arising out of the use of the Easement area by the City, its agents, contractors, employees, the utility companies, excluding any loss, damage, liability, expense, claim or demand that results from the sole negligence or willful misconduct of the District or its officers, directors, agents, or employees. The City's indemnification obligation survives the expiration and termination of the Easement as to any such claim or occurrence that arose during the term of the Easement. Issues related to environmental contamination existing as of the date this Easement is executed by the District are not addressed in the indemnity provision.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A vibrant waterfront destination where residents and visitors converge.
- A Port with a healthy and sustainable bay and its environment.
- A Port that is a safe place to visit, work and play.
- A Port with an innovative and motivated workforce.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Background

The CVBMP is the result of a decade-long joint planning effort by the District, the City, and a broad coalition of stakeholders. The development of public and private infrastructure within the CVBMP is the next step in the process. One of the main components of the public infrastructure are the streets and the utilities that will connect to the various new and existing developments throughout the CVBMP.

Easement

The Form Easement with the City is for a term of 66-years. The Easement area is dedicated as an easement for street and utility purposes only and is not a transfer of fee and shall be used only for those purposes described in the Easement that comply with the Public Trust Doctrine. The Easement area is intended to be used as a public right of way, including but not limited to, roadway

(i.e., medians, sidewalks, parkways and Class I, II, or III bicycle facilities) and utility facilities (franchise and non-franchise) purposes. The Easement would allow for construction, operations, maintenance, and utility installation in the Easement area under the City's existing Franchise Agreements and Non-Franchise Agreements. Per the Amended and Restated Revenue Sharing Agreement approved by the Board pursuant to Resolution 2019-140, it was contemplated that the City would be responsible for the operations and maintenance of the streets within the CVBMP, which this Easement would help accomplish.

The Easement is a critical path item not only for the RHCC and Costa Vista RV Park, but for all phases of development within the CVBMP. Currently there are both City streets and District streets in the CVBMP. The Form Easement would dedicate the Easement area to the City as an easement to be used for street and utility purposes only for the term of the Easement. As the City currently has Franchise Agreements and other similar agreements with the utility companies that operate in City controlled streets, the City is well poised to continue these relationships in the Chula Vista Bayfront that would allow for efficient utility planning throughout the CVBMP. This is advantageous for the District as the City will not only maintain the street, but currently has Franchise Agreements with various utilities including SDG&E and Sweetwater Authority that are necessary for the development of the Costa Vista RV park, RHCC, and other future development projects. The Easement would allow for utility infrastructure to be efficiently installed as is needed for the RHCC and Costa Vista RV park without the need for easements outside the development or parcel (i.e., easements to connect the utilities to the parcels from the streets). Having utilities installed and maintained in the Easement area by way of Franchise Agreements is standard practice for the City. Subsequent relocations of utilities in the street during the term of the Easement may also be feasible through the Franchise Agreements and Non-Franchise Agreements with the City on a project by project basis, although it will not be contractually required of the City.

Recommendation

Staff recommends that the Board approve substantially the Form Easement attached hereto as Attachment B and authorize the Executive Director or her designated representative to execute the Form Easement attached hereto as Attachment B in substantially the same form attached as Attachment B provided that (i) the Form Easement executed by the Executive Director or her designated representative has all blanks filled in and all exhibits attached in accordance with the guidance set forth in the Form Easement attached hereto as Attachment B; and (ii) to the extent there are any new or modified terms in the Form Easement executed by the Executive Director or her designated representative, such new or modified terms do not have the effect of increasing the term of the Form Easement or reducing any indemnity in favor of the District.

The City's commitment to maintain, repair and operate the Easement area, right of way, and City's utility facilities is in line with the distribution of responsibilities that the District's and City's partnership has envisioned for the CVBMP and will now continue through the development of the RHCC and Costa Vista RV Park for 66 years. In addition, the City's existing relationship with the various utilities will ensure that the utility system throughout the CVBMP remains intact and efficient. Staff believes that these two benefits outweigh any benefit that the District would receive should it had entered into the agreements with the utility companies itself. Finally, although the City is not required to relocate the Easement if requested by the District, the District believes that its strong relationship with the City would assist in this process and the parties could find a solution that is favorable to the CVBMP.

General Counsel's Comments:

The Office of the General Counsel has reviewed this agenda sheet and the Form Easement attached

as Attachment B as presented to it and approves them each as to form and legality.

Environmental Review:

The proposed Board action, including without limitation, an ordinance substantially approving the form of a 66-year non-exclusive easement to the City for street and utility purposes, was adequately covered in the Final Environmental Impact Report (FEIR) for the Chula Vista Bayfront Master Plan (CVBMP) (UPD #83356-EIR-658; SCH #2005081077; Clerk Document No. 56562), certified by the District on May 18, 2010 (Resolution No. 2010-78), the Addendum to the FEIR, which was adopted by the Board on August 13, 2013 (Resolution No. 2013-138), and the Second Addendum to the FEIR, which was adopted by the Board on April 10, 2018 (Resolution No. 2018-0069). The proposed Board action is not a separate “project” for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); *Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist.* (2012) 206 Cal.App.4th 1036.) Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the FEIR and Addendums, the District finds and recommends that the proposed Board action does not require further environmental review as: 1) no substantial changes are proposed to the project and no substantial changes have occurred that require major revisions to the FEIR and Addendum due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; and 2) no new information of substantial importance has come to light that (a) shows the project will have one or more significant effects not discussed in the FEIR and Addendums, (b) identifies significant impacts would not be more severe than those analyzed in the FEIR and Addendum, (c) shows that mitigation measures or alternatives are now feasible that were identified as infeasible and those mitigation measures or alternatives would reduce significant impacts, and (d) no changes to mitigation measures or alternatives have been identified or are required. Pursuant to CEQA Guidelines §15162(b), the District finds and recommends that no further analysis or environmental documentation is necessary. Accordingly, the proposed Board action is merely a step in furtherance of the original project for which environmental review was performed and no supplemental or subsequent CEQA has been triggered, and no further environmental review is required.

The proposed Board action complies with Sections 21, 35, and 87 of the Port Act, which allow for the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers, and for the use of tidelands for the construction, reconstruction, repair, and maintenance of highways, streets, roadways, bridges, belt line railroads, parking facilities, power, telephone, telegraph or cable lines or landings, water and gas pipelines, and all other transportation and utility facilities or betterments incidental, necessary, or convenient for the promotion and accommodation of any of the uses set forth in Section 87. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action was covered in the Coastal Development Permits (CDP) for the Costa Vista RV Resort (CDP-2019-04; Clerk Document No. 70332) approved by the Board on September 12, 2018 (Resolution No. 2018-152) and the Resort Hotel and Convention Center, Parking, Infrastructure and Phase 1A Improvements (CDP-2019-03; Clerk Document No. 70152) approved by the Board on June 18, 2019 (Resolution No. 2019-080). The proposed Board action is consistent with the project in those CDPs. No additional action under the California Coastal Act is required at this time.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

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Attachment(s):

Attachment A: Location Map

Attachment B: Form Easement